IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1375 OF 2004

The Depot Superintendent
HPCL and another ...Appellants

Vs.

Kolhapur Agricultural Product
Market Committee ...Respondent

Mr.N.V.Walawalkar with Mr.M.D.Siodia i/b M/s.Rustanji & Ginwala for the Appellants.
Mr.T.S.Ingale for the Respondent.

CORAM: A.S.OKA, J.
DATED: FEBRUARY 10,2005.

P.C.:

1. Heard Shri Walawalkar for the Appellants and Shri Ingale for the Respondent. The Appellants are the original defendants and the Respondent is the original Plaintiff. It is not in dispute that on 28th December 1959 the Respondent executed a deed of lease in favour of M/s. Caltex India, the predecessor in title-the Appellants in respect of the plot of land. It is also an admitted position that the lease was for a period of 20 years with an option of renewal for further period of ten years. On 30th December 1976 The Caltex [Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the undertakings in India of Caltex (India) Ltd.] Act, 1977 (hereinafter referred to as said Act of 1977) was brought into force. Every right, title or interest of any property in India including tenancy or leasehold rights which Caltex (India) held were also vested in the Central

Government. The Undertakings of the Caltex (India) Ltd. stood vested in the Central Government. The Central Government exercised a power under Section 9 of the said act of 1977 and vested the rights of Caltex (India) in a Government Company, the Hindustan Petroleum Corporation Ltd. In the year 1978 the Appellants requested the Respondent to renew the deed of lease for further period of ten years and it is not in dispute that the lease was renewed for further period of ten years. On 22nd October 1997, the Respondent issued notice under Section 106 of Transfer of Property Act, 1882 and terminated the tenancy of the Appellants and filed a suit for eviction.

2. The suit was defended on various grounds by the Appellants. The Trial Court decreed the suit and directed the Appellants to hand over possession. The issues raised in the suit were whether the Respondent was a local authority within the meaning of the Maharashtra Rent Control Act, 1999 and whether the Appellants were protected by the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947. Another issue raised was whether termination of tenancy by notice dated 27th October 1997 was valid. The Trial Court answered all the issues in favour of the Respondent-Plaintiff.

3. In an Appeal preferred by the Appellants before the District Court, an Application was made by the Appellants at Exh.18 for amendment of written statement. The said

application was made for relying upon the alleged rights conferred on the Central Government and the Appellants under Section 7 (3) of the said Act of 1977 for getting the lease renewed on the same terms and conditions. In the text of the proposed amendment a reference was made to the letter dated 18th March 1989 sent by the Appellants by which they sought renewal of the lease for further period of 30 years from the year 1989. The reference to the said letter dated 18th March 1989 is only in the text of amendment. The said Application for amendment was allowed. It is an admitted position that after the application for amendment was allowed, no oral evidence was led by the Appellants. After the amendment was allowed, no application was made by the Appellants for production of additional evidence.

4. The Appellate Court while dismissing the Appeal negatived all the contentions raised by the Appellants. The Appellate Court referred to Section 7 (3) of the said Act of 1977 and came to the conclusion that after the said Act of 1977 was brought into force, the Appellants have already availed of one extension and therefore the Appellants cannot avail of one more extension.

5. Shri Walawalkar for the Appellants relied upon the letter dated 18th March 1989 sent by the Appellants to the Respondent in which a desire was expressed by the Appellants to renew the lease for further period of 30 years from 1st

May 1989. Shri Walawalkar relied upon the Judgment of the Apex Court reported in 2004 (4) SCALE page No.249 (Bharat Petroleum Corporation Ltd. Vs.P. Kesavan & Anr.) wherein the Apex Court had an occasion to consider the provisions of another enactment viz. (The) Burmah Shell (Acquisition of Undertakings in India) Act, 1976. He submitted that the provisions of Section 5 (2) of the said Act of 1976 are in pari materia with Section 7(3) of the said Act of 1977. He relied upon the said decision of the Apex Court and in particular the observations made in paragraph Nos.13 and 18 thereof. He also referred to another Judgment of the Apex Court reported in (1999) 4 S.C.C. page No.450 (Hindustan Petroleum Corporation Ltd. and another Vs. Dolly Das). He submitted that the right which was exercised in the year 1978-79 was on the basis of relevant renewal clause in the lease. He submitted that the legislature has conferred a right of renewal on the Appellants by virtue of section 7(3) which can be exercised independently of the terms of contract and therefore the moment a desire was expressed by the Appellants by sending letter dated 18th March 1989, the lease stood renewed from 1st May 1989 for a period of 20 years. He submitted that under section 7(3) the renewal can be for the entire period of original lease. When I made a specific query, Shri Walawalkar categorically stated that the case of the Appellants is that in the year 1989 the Appellants were entitled to renewal for a period of 20 years in view of Section 7(3) as the original lease period was 20 years. He

submitted that the Appellants were entitled to renewal for 20 years ending with the year 2009. He submitted that the statutory right of the Appellants cannot be defeated and the Appellate Court was clearly in error by not considering the Section 7(3).

6. Shri Ingale for the Respondent stated that after the amendment was allowed, no evidence was led by the Appellants and therefore the letter dated 18th march 1989 relied upon by the Appellants is not a part of the evidence on record. He relied upon the Judgment of Division Bench of this Court reported in A.I.R. 1985 Bombay page No.4 (Trade Centre Developers and Builders Pvt.Ltd. and another Vs. Union of India and another). He relied upon the ratio of the Judgment as seen from paragraph No.18 of the Judgment. He submitted that there can be only one renewal after coming into force the said Act of 1977 and that is precisely the ratio of the Judgment of the Division Bench. He submitted that no interference is called for.

7. When the hearing of this Appeal was adjourned on the last occasion, as I found that two public bodies were contesting the litigation, I made suggestion to the Counsel for the Appellants that if it is the case of the Appellants that they were entitled to renewal of lease up to year 2009, whether the Appellants were ready and willing to give undertaking to vacate the suit plot in the year 2009 so that the litigation

can be put to an end. It was also pointed out that the Appellants may not have protection of the Rent Control legislation. Today on instruction, Shri Walawalkar the learned Counsel for the Appellants stated that the suggestion is not acceptable to the Appellants. Therefore, today I have heard the matter on merits at length.

8. It is necessary to advert to Section 7 (3) of the said Act of 1977 which reads thus,

> "7(3).On expiry of the term of any lease, tenancy or arrangement referred to in sub section (1) or sub section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into."

On plain reading of Section 7(3) it is noted that there is no automatic renewal and there can be renewal only if it is so desired by the Central Government.

9. The entire crux of the matter is whether Shri Walawalkar can rely upon the letter dated 18th March 1989 which according to him records desire of the Appellants to invoke the option of renewal. It is to be seen here that the

reliance was placed on the letter for the first time when written statement was amended during the pendency of the Appeal. As stated earlier, the said letter is referred to in the text of the proposed amendment and not in the averments made in the application for amendment. It is to be noted that no application was made by the Appellants for leading additional evidence by invoking provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908. It is, therefore, obvious that the letter dated 18th March 1989 cannot form a part of the evidence before the Appellate Court. The said letter was not produced by way of additional evidence in the Appeal. Moreover, it is not the case that the Respondent gave consent for admitting the said letter in evidence. Even in the Judgment of the Appellate Court I found no reference to the said letter. Shri Walawalkar, however, submitted that after written statement was allowed to be amended, no further pleadings were filed by the Respondent controverting the said letter. He submitted that the Appellate Court has accepted the correctness of the said letter as it is referred to in the order by which the application for amendment is allowed. It must be noted that the Appellants relied upon the said letter in the Amended written statement and therefore there was no occasion for the Respondent to file further pleadings. If the Appellants were contending that by letter dated 18th March 1989 a desire was expressed for renewal, it was for the Appellants to produce the said letter with the permission of the Appellate Court and make an attempt to prove the same.

The reliance placed by Shri Walawalkar on order on application for amendment is also misplaced. Unless the said letter was produced as evidence and was duly proved, no reliance can be placed on the same. There is nothing on record to show that an office copy of the said letter was produced by the Appellants and execution thereof was proved and it was also proved that the letter was received by the Respondents. Therefore, there is nothing on record to show that any desire was expressed by the Appellants to obtain further renewal of the lease. It is also to be noted here that it appears from the record that there was no reply sent to the notice of termination. If really at any point of time such desire was expressed by the company, the company would have sent reply to the notice of termination and recorded such a desire. It is also to be noted here that the detailed written statement was filed in the Trial Court by the Appellants. In the said written statement also no case is made out that any such desire was expressed at any time in terms of Section 7(3) for renewal of the lease. It appears that an attempt was made by the Appellants to raise the said contention in Appeal but no foundation was laid to the said contention taken in the amended written statement by leading evidence.

10. Reliance is placed on paragraph No.18 of the Judgment of the Apex Court in case of Bharat Petroleum Corporation Ltd.(supra). The Apex Court has held that once the

Government company expressed its desire to renew the lease, the same would stand renewed on the same terms and conditions. As held by me there is nothing on record to show that such a desire was expressed by the Appellants. The Government company can express the desire only by communication in writing and such communication issued by the Appellants is not proved in accordance with law of evidence before the Courts below.

11. Even assuming that the such a desire was expressed, it is necessary to see whether the company is entitled to second renewal. The question involved in this Appeal is whether after exercising the right of renewal under the contract of lease after coming into force the said Act of 1977, the Appellants can again exercise right under Section 7(3) and claim one more extension. It is not in dispute that both the Judgments of the Apex Court P.Kesavan (supra) and Dolly Das (supra) have not specifically decided the said question. A useful reference will have to be made to the decision of the Division Bench of this Court in case of Trade Centre Developers (supra). Before the Division Bench the challenge was to the validity of Esso (Acquisition of Undertakings in India) Act, 1974. The Division Bench in paragraph No.18 has held thus,

> "18. ...Taking any view of the matter it cannot be said that the provisions of Ss. 5(2) and 7(3)

> are in any way violative of the Article 300A of the Constitution. Even if it is assumed that the legislation providing for deprivation of property must satisfy the requirements of law, that is it must be just, fair and reasonable, then also in our view all these tests are wholly satisfied in the present case. Sections 5(2) and 7(3) of the Act have been enacted to achieve the object of the Act. In the absence of such provisions the very purpose and object of the legislation will be frustrated. The renewal is sought on the same terms and conditions. **The option conferred by the said provisions could be exercised once.** The terms and conditions of existing lease were already decided between the parties by negotiation and agreement. The renewal of the lease on the same terms and conditions is not only reasonable but is also just and fair. We do not find that there is anything unfair or unreasonable or unjust in the said provisions..."

It is to be seen here that the option of renewal was exercised in the year 1978 by the Appellants. At that time the provisions of said Act of 1977 were already in force. The benefit of an option for renewal was already availed of

by the Appellants once and for the first time during the pendency of the Appeal an attempt was made by the Appellants to contend that they are entitled to benefit of Section 7(3). The said attempt was not made by sending reply to the notice of termination and by asserting the right in the written statement filed in the trial court. The decree was passed by the trial Court in the suit of 1998 in July 2000. The appeal was filed in the year 2000 and the application for amendment was made on 26th June 2002. If in the year 1979 i.e. on expiry of lease period even if lease was to be renewed in terms of 7(3), it is possible to argue that extension could have been as per the terms of original lease i.e. for 20 years from 1979. It is not disputed in this Appeal that the Appellants are not entitled to protection of the Maharashtra Rent Control Act, 1999.

12. In view of what is held above, no substantial question of law arises. There is no merit in the Appeal. Appeal is dismissed with no order as to costs.

13. At this stage Shri Walawalkar prays that the decree for possession cannot be allowed to be executed for a reasonable time. Shri Ingale opposed the prayer and stated that for a long period the Appellants have not deposited the amount of rent in the Trial Court.

14. Considering the facts and circumstances of the case the

decree for possession shall not be executed till 30th April 2005. If the Appellants are in arrears of rent, the entire amount due and payable shall be deposited by the Appellants in the Trial Court within three weeks from today.

15. certified copy is expedited.

Judge.